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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/521,983

08/17/2005

Nathan Charles Brown

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1483

201 7590 06/09/2009  
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EXAMINER

CHUI, MEI PING

ART UNIT

PAPER NUMBER

1616

MAIL DATE

DELIVERY MODE

06/09/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/521,983	<b>Applicant(s)</b> BROWN ET AL.	
	<b>Examiner</b> MEI-PING CHUI	<b>Art Unit</b> 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2009 and 04 June 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 12-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 12-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

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***DETAILED ACTION***

***Status of Action***

Receipt of Amendments/Remarks filed on 03/19/2009 and 06/04/2009 are acknowledged. Claims 1-10, 12-15 are pending in this application. Claims 9, 10, 13, 14 have been amended; claims 1-8, 12, 15 are previously presented, claim 11 has been cancelled.

***Status of Claims***

Accordingly, claims **1-10, 12-15** are presented for examination on the merits for patentability.

Rejection(s) not reiterated from the previous Office Action are hereby withdrawn. The following rejections are either reiterated or newly applied. They constitute the complete set of rejections presently being applied to the instant application.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 1-10, 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hall, P. J. (U. S. Patent No. 5,840,289).**

***Applicants Claim***

Applicant claims a suspension antiperspirant aerosol composition comprising (i) a milled activated aluminum chlorohydrate (AACH) having non-hollow particles, (ii) a carrier fluid comprising a masking oil of viscosity  $10^4$  mm<sup>2</sup>/s or greater and (iii) a propellant gas. Applicant also claims a method of manufacture a suspension antiperspirant aerosol composition and a method of reducing perspiration and giving low visible deposits comprising an application to the human body of a suspension antiperspirant aerosol composition.

***Determination of the scope and content of the prior art  
(MPEP 2141.01)***

Hall, J. P. teaches a suspension antiperspirant aerosol composition suitable for topical application to human skin and a method of utilizing said suspension antiperspirant aerosol composition to reduce visible whitening (column 1, lines 7-8 and 48-54).

Hall, J. P. teaches that the composition comprising (i) 1-30 % by weight of non-hollow milled activated aluminum chlorohydrate, (ii) a liquid masking agent, and (iii) 30-90 % of a propellant (column 1, lines 57-62). More specifically, Hall, J. P. teaches that the milled activated aluminum chlorohydrate (**AACH**) comprises non-hollow particles and has a continuous

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refractive index of 1.52 to 1.57. Hall, J. P. also teaches that the aerosol active AACH is in the form of particles of mean diameter (e.g. 20-30  $\mu\text{m}$ ), which is produced by milling down larger particle size particles (e.g. 100  $\mu\text{m}$ ) to smaller mean particle size particles (e.g. 30  $\mu\text{m}$ ) to result in reduced whitening effect (see column 3, lines 49-53; column 4, lines 6-12 and 36-38).

Hall, J. P. further teaches that the liquid masking agent in the composition has a refractive index of 1.40 to 1.57, which can help to eliminate visible whitening by matching its refractive index with the particle shell of the AACH (column 2, lines 10-11 and column 3, lines 55-59).

In addition, Hall, J. P. teaches that the liquid masking agent can also serve as a diluent, lubricant or spreading agent to facilitate uniform distribution of the antiperspirant material on the skin (column 2, lines 35-37), and the liquid masking agent, which has the refractive index of 1.40-1.57, can be selected from benzoate esters or phenylsilicone (column 2, lines 16-19, 45-49). Further, Hall, J. P. teaches that the liquid composition can comprise a volatile silicone fluid and other ingredients, i.e. hydrophobic oils and perfumes (column 2, lines 50-55; column 3, lines 13, 23; column 4, line 50). Hall, J. P. also teaches that in order to prevent caking or settling out of the antiperspirant in the emollient liquid carrier fluid, a bulking or suspending agent is preferably incorporated into the composition (column 2, lines 56-59).

Hall, J. P. teaches that the composition comprises a propellant gas for expelling the composition from a container and a carrier, which can be any liquefiable gas known in the art for use in propellant driven aerosol container, in an amount less than 90 % by weight (column 2, line 66 to column 3, line 5).

***Ascertainment of the difference between the prior art and the claims  
(MPEP 2141.02)***

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Hall, J. P. does not specifically teach that the masking agent has viscosity of  $10^4$  mm<sup>2</sup>/s or greater, as instantly claimed.

***Finding of prima facie obviousness Rational and Motivation***  
***(MPEP 2142-2143)***

It would have been obvious to a person of ordinary skilled in the art at the time the invention was made to follow the guidance of Hall, J. P. to arrive at the claimed invention.

One of ordinary skill would have been motivated to do this because the prior art Hall, J. P. teaches the concept of utilizing a masking agent having a refractive index that matches the refractive index of the milled AACH (the antiperspirant active) for eliminating or reducing visible whitening. The viscosity of the masking agent is merely judicious selection and would have been obvious for one of ordinary skilled in the art to try the masking agents as taught by Hall, J. P., then selected the desirable one to use, depending on the types of masking agent and the desirable effect one wishes to obtain.

From the teaching of the references, one of ordinary skill in the art would have had a reasonable expectation of success to arrive at the claimed invention. Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

**The previous rejection with respect to claims 1-10, 12-15, under 35 U.S.C. 103(a) as being unpatentable over Hall, P. J. (U. S. Patent No. 5,840,289), is maintained.**

***Response to Arguments***

Applicants' arguments filed on 03/19/2009 have been fully considered but they are not persuasive.

Applicants argue that the instant invention was based on the finding that the use of a high viscosity masking oil, in particular a masking oil having a viscosity of  $10^4 \text{mm}^2/\text{s}$  or greater, in an aerosol antiperspirant composition that contains a milled activated aluminium chlorohydrate (AACH), results in composition having remarkably low whitening effect (see Remarks: page 5). Applicants also argue that the masking oils employed in the Hall, P. J. examples are Finsolv TN, Silkflo 364NF, Panalene L-14E and Cosmacol PLG possess a much lower viscosity than the masking agent, as instantly claimed. In addition, the prior art Hall, P. J. does not disclose or suggest the use of the high viscosity oils of the subject claims. Nor is there any teaching or suggestion of the reduced whiteness afforded by the subject combination of milled active and masking oil as demonstrated by the data provided in the subject application and discussed in Applicants' prior response (see Remarks: pages 5-7).

The argument is not persuasive because the prior art Hall, J. P. teaches a method to provide an improved suspension aerosol antiperspirant composition having reduced visible whitening, the same effect as the instant invention. With respect to the masking oils, although Hall, P. J. teaches four specific masking agents (Finsolv TN, Silkflo 364NF, Panalene L-14E and Cosmacol PLG) that possess a lower viscosity than the instant masking oil, they are capable of providing a reduced visible whitening effect. In addition, other than these four specific masking agents, Hall, P. J. also broadly teaches other masking agents, i.e. benzoate esters, hydrogenated

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polybutene, PPG-14-butyl ether, and phenylsilicone, that are also capable of producing the same reduced visible whitening effect when used in combination with AACH. Therefore, the prior art Hall, P. J. clearly teaches the same concept as the instant invention, which employs a composition comprising a particular antiperspirant active (an activated aluminum chlorohydrate or AACH which has a desirable continuous refractive index) and a masking agent that has a desirable refractive index matching with the AACH antiperspirant active to produce an effect of reducing visible whitening.

Therefore, the viscosity of the broadly claimed masking agent is merely judicious selection and it would have been obvious for one of ordinary skill in the art to try those masking agents as taught by Hall, J. P., then selected the one having desirable matching refractive index and viscosity, depending on the types of masking agent and the desirable effect one wishes to obtain.

### ***Conclusion***

No claims are allowed.

Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37



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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Contact Information***

Any inquiry concerning this communication from the Examiner should direct to Helen Mei-Ping Chui whose telephone number is 571-272-9078. The examiner can normally be reached on Monday-Thursday (7:30 am – 5:00 pm). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where the application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either PRIVATE PAIR or PUBLIC PAIR. Status information for unpublished applications is available through PRIVATE PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the PRIVATE PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/H. C./  
Examiner, Art Unit 1616

/Johann R. Richter/  
Supervisory Patent Examiner, Art Unit 1616